EXHIBIT 1
DATE 1-22-09
HB 296

DEPARTMENT OF JUSTICE
HB 296: To clarify that Tribal Fish and Game Wardens of Tribes with State Cooperative Agreements may be appointed As Ex Officio State Wardens

Background

Montana law (§ 87-1-503 MCA) provides that several types of federal and state officers are ex officio state wardens. It does not expressly include tribal fish and game officers of federally recognized tribes unless they also have federal credentials from the United States Fish and Wildlife Service (USFWS). In the past, the USFWS issued commissions to POST-certified tribal fish and game officers so they could also enforce federal law. The USFWS changed its policy and now no longer issues such credentials.

Because of this change in federal policy, our ability to continue our existing policy of cross deputizing tribal fish and game officers as ex officio state officers through cooperative agreements is not clear. HB 296 would include tribal fish and game officers of tribes with state cooperative agreements as ex officio wardens. It frees the state from reliance on federal regulatory changes in this regard. The requirement that the tribe has a cooperative agreement with the state assures that DFWP may have additional provisions in place to monitor implementation on a case-by-case basis.

Currently, the State has only one cooperative agreement for bird hunting and fishing on a reservation. Since 1990, the State of Montana and the Confederated Salish and Kootenai Tribes (CSKT) have cooperatively enforced a uniform set of fishing and bird hunting regulations throughout the entire Flathead Indian Reservation. These regulations are jointly issued by the CSKT and the Montana Department of Fish, Wildlife and Parks. The agreement provides for cross-deputization between State and CSKT wardens and has been continuously implemented since its inception.

When the state/tribal agreement was executed, CSKT wardens were cross-deputized by USFWS under a long-standing federal Memorandum of Agreement. As a result, CSKT wardens satisfied the provisions of § 87-1-503 MCA. The USFWS, without notice terminated all its cross-deputization agreements with Indian Tribes throughout the United States, leaving tribal game wardens in legal limbo.

Purpose of HB 296

HB 296 would clarify the enforcement authority of tribal fish and game wardens of tribes with state cooperative agreements by adding them to the ex officio wardens listed in § 87-1-503 MCA. By recognizing tribal officers of tribes that have agreements with the state in state statute, HB 296 would clarify Montana's ability to cross-deputize these officers through specific cooperative agreements.